



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Consenting to Change of Control and Internal Restructuring of AT&T Corporation to AT&T Comcast Corporation

**MEETING DATE:** May 5, 2002

**PREPARED BY:** Janet L. Hamilton, Management Analyst


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**RECOMMENDATION:** That the City Council adopt a resolution consenting to change of control and internal restructuring of AT&T Corporation to AT&T Comcast Corporation.

**BACKGROUND:** The parent corporation of the City of Lodi's cable television franchise, AT&T Broadband, has announced its intention to merge with Comcast Corporation to form a new public company, AT&T Comcast Corporation. Under the terms and agreements governing the transaction, AT&T Corporation will spin off its cable system assets and simultaneously merge them with Comcast, forming a new company called AT&T Comcast Corporation. The City's franchise agreement requires that the Corporation obtains the consent of the City for this transaction.

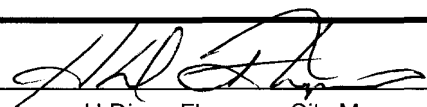
**FUNDING:** None

Respectfully submitted,

  
H. Dixon Flynn  
City Manager

Attachments

APPROVED: \_\_\_\_\_

  
H Dixon Flynn - City Manager



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February 25, 2002

Mr. H. Dixon Flynn, City Manager  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

Re: Merger of AT&T Broadband and Comcast Corporation  
Request for Consent to Change of Control

Dear Mr. Flynn:

AT&T Corp., the parent corporation of your franchisee, and Comcast Corporation have announced their intention to combine their cable systems into a new public company, AT&T Comcast Corporation. We are writing to provide you with information regarding this transaction, and to formally request any consent that may be required by franchise or applicable law.

AT&T and Comcast are excited about the merger, which we believe will have significant benefits for our customers. The transaction will create the world's leading communications, media and entertainment company. With the combined expertise and initiative of AT&T Broadband and Comcast, we hope to enhance the quality and choice of products and services available to consumers.

Under the terms of the agreements governing the transaction, following an internal restructuring, AT&T Corp. will spin off its cable system assets and simultaneously merge them with Comcast, forming a new company to be called AT&T Comcast Corporation. We have attached a description of each step of the process, including "before" and "after" charts, to assist you in understanding the transaction. Subject to the internal restructuring, the transaction will not change the holder of the franchise; the franchise will continue to be held by the same legal entity after the merger is complete. However, the transaction will result in a new indirect parent company for the Franchisee – AT&T Comcast Corporation.

Our records indicate that the franchise may require that we obtain your consent to this transaction. To assist you in evaluating our request, we have enclosed the following materials:

- **FCC FORM 394.** Enclosed are three copies of the Federal Communications Commission's (FCC's) Form 394 and any additional copies required by your franchise. According to the FCC, the Form 394 is designed to provide you with the information necessary to assess the financial, legal and technical qualifications of the proposed new controlling entity. As part of that Form, we are including any specific additional

information required by the franchise. Under the FCC's rules, you have a maximum of 120 days from the date you receive this information to review it and to act upon our request for consent to the merger. This timeframe may be shorter if so specified in your franchise. If you choose not to take any action within this 120 day period, under federal law your consent will be deemed granted.

- **CONSENT RESOLUTION.** For your convenience and consideration, we have also enclosed a draft resolution that addresses your consent to the transaction. We would request that this resolution be placed on your agenda for consideration at your earliest convenience.

If at any time you have any questions or concerns about the transaction or would like any additional information, please feel free to call me at 916-858-4905. You can write to me at:

AT&T Broadband  
2893 Prospect Park  
Rancho Cordova 95670  
Fax: 916-858-4905

If you write to me, please send a copy to:

AT&T Broadband  
188 Inverness Drive West, Room 6-042  
Englewood, CO 80112  
Fax: 303-858-3615

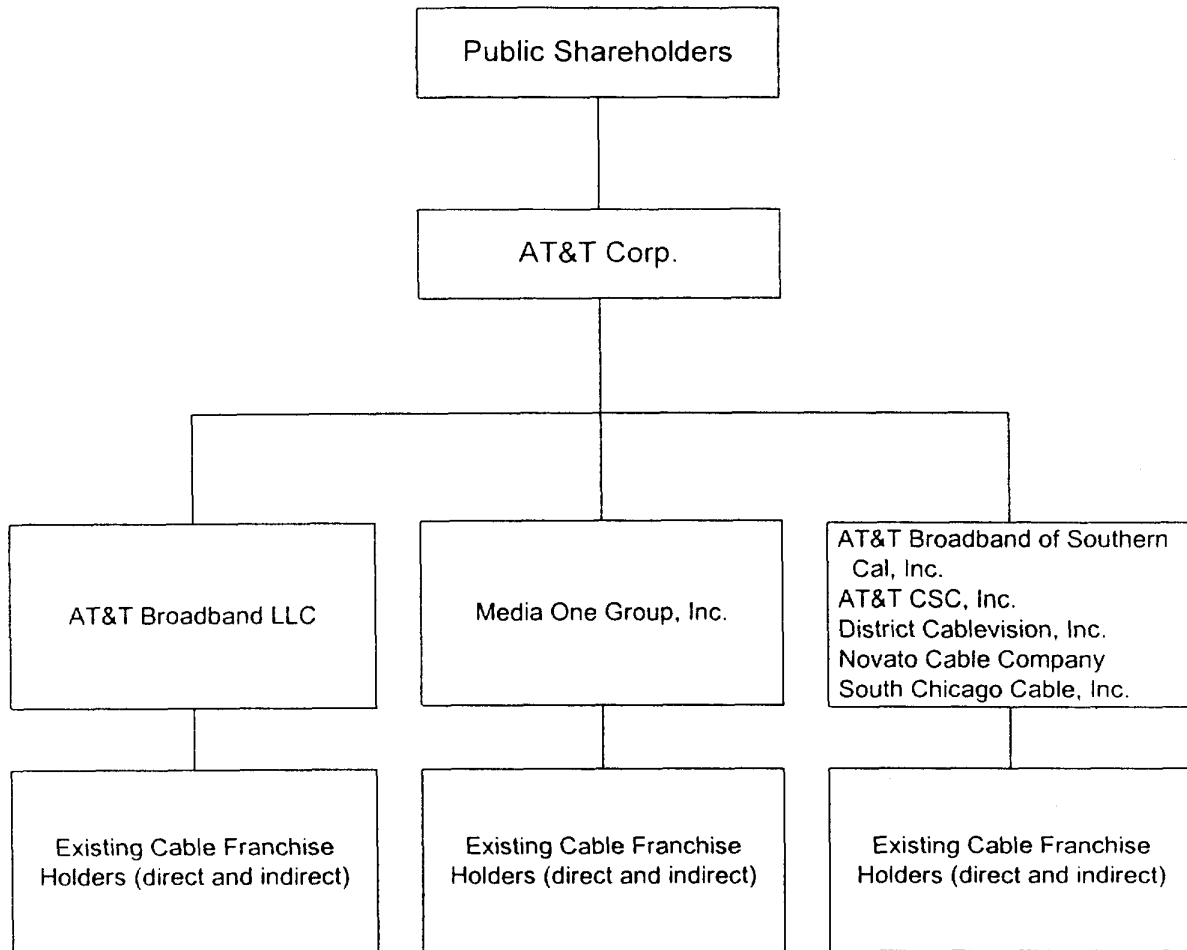
Thank you for your assistance in this matter.

Sincerely,

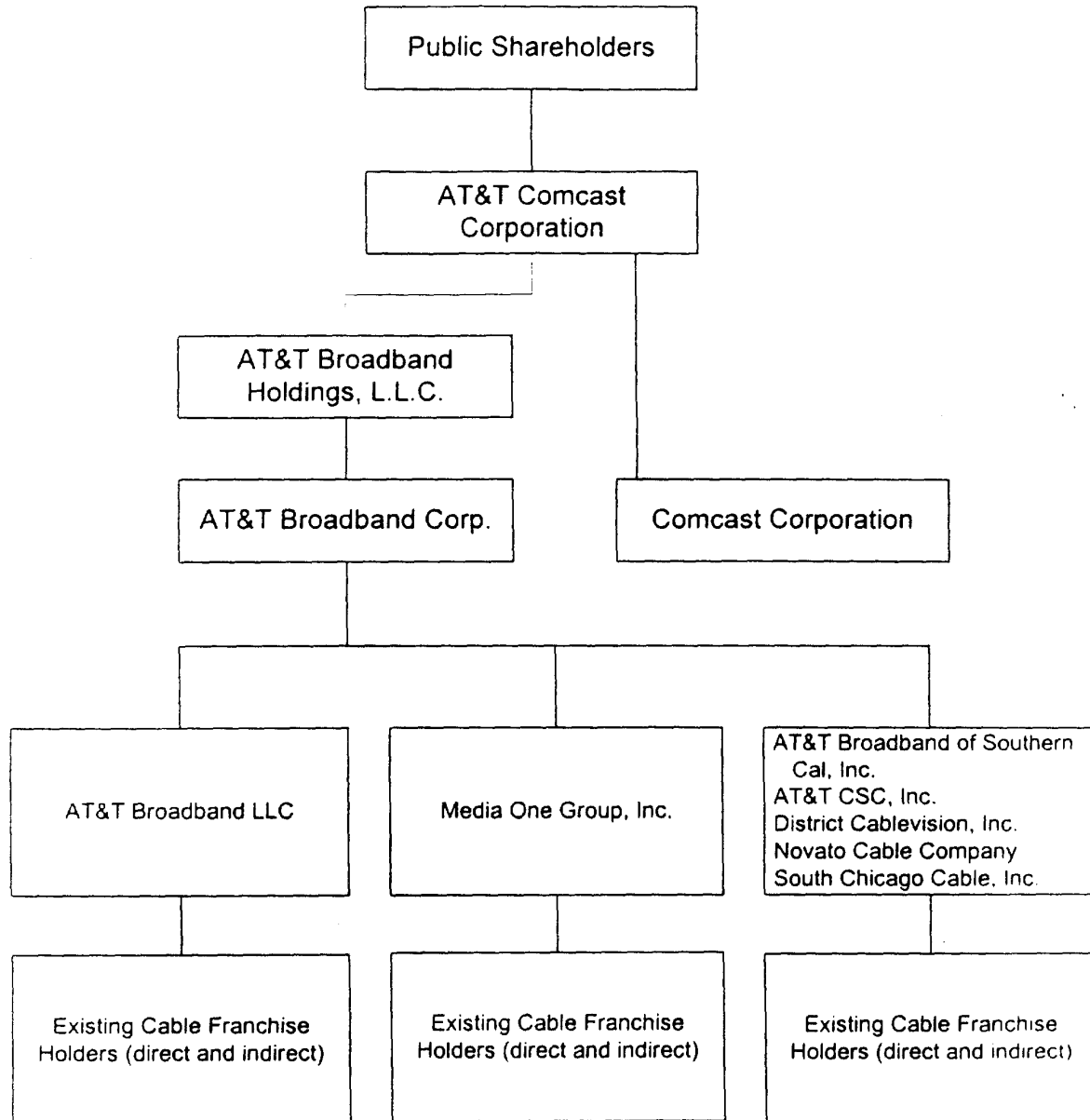
By: Susan Ritchie/c  
Susan Ritchie  
Vice President, Franchising and Local  
Government Affairs

Attachment and Enclosures

## CURRENT STRUCTURE



## FINAL STRUCTURE



FCC 394

APPLICATION FOR FRANCHISE AUTHORITY  
CONSENT TO ASSIGNMENT OR TRANSFER OF CONTROL  
OF CABLE TELEVISION FRANCHISE

FOR FRANCHISE AUTHORITY USE ONLY

DATE: <b>February 25, 2002</b>	I. Community Unit Identification Number: <b>CA0155</b>
2. Application for: <input type="checkbox"/> Assignment of Franchise <input checked="" type="checkbox"/> Transfer of Control	
3. Franchising authority: <b>CITY OF LODI</b>	
4. Identify community where the system/franchise that is the subject of the assignment or transfer of control is located: <b>CITY OF LODI</b>	
5. Date system was acquired or (for system's constructed by the transferor/assignor) the date on which service was provided to the first subscriber in the franchise area:	<b>N/A</b>
6. Proposed effective date of closing of the transaction assigning or transferring ownership of the system to transferee/assignee:	<b>As soon as all closing conditions have been satisfied</b>
7. Attach as an Exhibit a schedule of any and all additional information or material filed with this application that is identified in the franchise as required to be provided to the franchising authority when requesting its approval of the type of transaction that is the subject of this application	
Exhibit No. <b>1</b>	

PART I - TRANSFEROR/ASSIGNOR

1. Indicate the name, mailing address, and telephone number of the transferor/assignor.

Legal name of Transferor/Assignor (if individual, list last name first)			
<b>AT&amp;T Corp.</b>			
Assumed name used for doing business (if any)			
Mailing street address or P.O. Box			
<b>c/o AT&amp;T Broadband, LLC, 188 Inverness Drive West, Room 6-042</b>			
City	State	ZIP Code	Telephone No. (include area code)
<b>Englewood</b>	<b>CO</b>	<b>80112</b>	<b>(303) 858-5417</b>

2.(a) Attach as an Exhibit a copy of the contract or agreement that provides for the assignment or transfer of control (including any exhibits or schedules thereto necessary in order to understand the terms thereof). If there is only an oral agreement, reduce the terms to writing and attach. (Confidential trade, business, pricing or marketing information, or other information not otherwise publicly available, may be redacted).

Exhibit No.  
**2**

(b) Does the contract submitted in response to (a) above embody the full and complete agreement between the transferor/assignor and the transferee/assignee?

☐ Yes ☒ No

Exhibit No.  
**See Exhibit 2**



3. If the applicant is a corporation or a limited partnership, is the transferee/assignee formed under the laws of, or duly qualified to transact business in, the State or other jurisdiction in which the system operates?

☐ Yes ☒ No

If the answer is No, explain in an Exhibit.

Exhibit No.  
4

4. Has the transferee/assignee had any interest in or in connection with an application which has been dismissed or denied by any franchise authority?

☐ Yes ☒ No

If the answer is Yes, describe circumstances in an Exhibit.

Exhibit No.  
5

5. Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the transferee/assignee in a civil, criminal or administrative proceeding, brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authorization (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or employment discrimination?

☐ Yes ☒ No

If the answer is Yes, attach as an Exhibit a full description of the persons and matter(s) involved, including an identification of any court or administrative body and any proceeding (by dates and file numbers, if applicable), and the disposition of such proceeding.

Exhibit No.  
6

6. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights with respect to any attributable interest as described in Question 2 (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

☒ Yes ☐ No

If Yes, provide particulars in an Exhibit.

Exhibit No.  
7

7. Do documents, instruments, agreements or understandings for the pledge of stock of the transferee/assignee, as security for loans or contractual performance, provide that: (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of any ownership rights by a purchaser at a sale described in (b), any prior consent of the FCC and/or of the franchising authority, if required pursuant to federal, state or local law or pursuant to the terms of the franchise agreement will be obtained?

☐ Yes ☒ No

If No, attach as an Exhibit a full explanation.

Exhibit No.  
8

### SECTION III - TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS

1. The transferee/assignee certifies that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate the facilities for three months.

☒ Yes ☐ No

2. Attach as an Exhibit the most recent financial statements, prepared in accordance with generally accepted accounting principles, including a balance sheet and income statement for at least one full year, for the transferee/assignee or parent entity that has been prepared in the ordinary course of business, if any such financial statements are routinely prepared. Such statements, if not otherwise publicly available, may be marked CONFIDENTIAL and will be maintained as confidential by the franchise authority and its agents to the extent permissible under local law.

Exhibit No.  
9

### SECTION IV - TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS

Set forth in an Exhibit a narrative account of the transferee's/assignee's technical qualifications, experience and expertise regarding cable television systems, including, but not limited to, summary information about appropriate management personnel that will be involved in the system's management and operations. The transferee/assignee may, but need not, list a representative sample of cable systems currently or formerly owned or operated.

Exhibit No.  
10



# SECTION V - CERTIFICATIONS

## Part I - Transferor/Assignor

All the statements made in the application and attached exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.	Signature: <b>AT&amp;T CORP.</b> By: <i>Rick D. Bailey</i>
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.	Date <b>February 25, 2002</b>
	Print full name <b>Rick D. Bailey</b>
Check appropriate classification: <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Indicate Title) <b>Vice President</b> <input type="checkbox"/> Other, Explain:	

## Part II - Transferee/Assignee

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The transferee/assignee certifies that he/she:

- (a) Has a current copy of the FCC's Rules governing cable television systems.
- (b) Has a current copy of the franchise that is the subject of this application, and of any applicable state laws or local ordinances and related regulations.
- (c) Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.	Signature: <b>AT&amp;T Comcast Corporation</b> By: <i>Brian L. Roberts</i>
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.	Date <b>February 25, 2002</b>
	Print full name <b>Brian L. Roberts</b>
Check appropriate classification: <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Indicate Title) <b>President and Chief Executive Officer</b> <input type="checkbox"/> Other, Explain:	

RESOLUTION NO. 2002-85

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE CONSENT TO CHANGE OF  
CONTROL AND INTERNAL RESTRUCTURING  
PERTAINING TO THE AT&T AND COMCAST MERGER

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WHEREAS, the cable franchise holder ("Franchisee") in the City of Lodi ("Franchise Authority") is an indirect subsidiary of AT&T Corp. ("AT&T"), and AT&T intends to merge with Comcast Corporation ("Comcast") to create a new company to be known as AT&T Comcast Corporation ("AT&T Comcast") pursuant to the terms of an Agreement and Plan of Merger dated December 19, 2001 by and among AT&T Corp., AT&T Broadband Corp., Comcast Corporation and certain of their respective affiliates, and a Separation and Distribution Agreement dated December 19, 2001 by and between AT&T Corp. and AT&T Broadband Corp. (the "Merger"); and

WHEREAS, prior to the Merger, pursuant to an internal corporate restructuring, the cable franchise or stock of the Franchisee, or indirect ownership of the Franchisee, may be transferred through one or more internal transfers or mergers to another direct or indirect subsidiary of AT&T, or Franchisee may elect as permitted by law to convert or reorganize its legal form to a limited liability company (together with the Merger, the "Transactions"); and

WHEREAS, following the Transactions, the resulting entity will be controlled by AT&T Comcast but will continue to operate the System and continue to hold and be responsible for performance of the cable franchise; and

WHEREAS, Franchisee and AT&T Comcast have requested that Franchise Authority consent to the Transactions in accordance with the requirements of the cable franchise and have filed an FCC Form 394 ("Transfer Application") with the Franchise Authority requesting such consent Transactions; and

WHEREAS, the Franchise Authority has reviewed the Transfer Application, examined the legal, financial and technical qualifications of AT&T Comcast, followed all required procedures in order to consider and act upon the Transfer Application, and considered the comments of all interested parties; and

WHEREAS, the Franchise Authority is willing to consent to the Transactions.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The Franchise Authority hereby consents to the Transactions in accordance with the terms of the cable franchise and applicable law.

SECTION 2. This resolution shall be deemed effective upon adoption.

SECTION 3. This resolution shall have the force of a continuing agreement with Franchisee and AT&T Comcast, and Franchise Authority shall not amend or otherwise alter this Resolution without the consent of Franchisee and AT&T Comcast.

Dated: May 1, 2002

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I hereby certify that Resolution No. 2002-85 was passed and adopted by the Lodi City Council in a regular meeting held May 1, 2002 by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and  
Mayor Pennino

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk